

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WES LEE BROWN,

Plaintiff,

v.

BERKS COUNTY JAIL, et al.,

Defendants.

CIVIL ACTION

NO. 23-0780-KSM

ORDER

AND NOW, this 9th day of May, 2023, upon consideration of Plaintiff Wes Lee Brown's Motion for Leave to Proceed *In Forma Pauperis* (Doc. No. 1) and *pro se* Complaint (Doc. No. 2), it is **ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Wes Lee Brown, #NX0574, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of SCI Mahanoy or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Brown's inmate account; or (b) the average monthly balance in Brown's inmate account for the six-month period immediately preceding the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Brown's inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to

Brown's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Superintendent of SCI Mahanoy.

4. The Complaint is **DEEMED** filed.

5. For the reasons stated in the Court's Memorandum, the following claims are **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii):

(a) Brown's claims for municipal liability against Defendant Berks County;

(b) Brown's claims challenging his conditions of confinement against Defendants Jeffrey Smith, Stephanie Smith, and Jessica Collins; and

(c) Brown's claims for denial of access to the courts claims against Defendants Stephanie Smith, Jessica Collins, and Hanna Long.

6. For the reasons stated in the Court's Memorandum, Brown's claims against Berks County Jail and his duplicative official capacity claims against Defendants Jeffrey Smith, Stephanie Smith, and Jessica Collins are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

7. The Clerk of Court is **DIRECTED** to terminate Berks County Jail as a Defendant in this matter.

8. The Clerk of Court is further **DIRECTED** to add Hanna Long, Law Librarian, as a Defendant in this matter.

9. The Clerk of Court is **DIRECTED** to send Brown a blank copy of the Court's standard form complaint for prisoners to use to file a complaint bearing the above civil action number.¹

10. Brown is given thirty (30) days to file an amended complaint in the event he can allege additional facts to state a plausible claim. **If Brown files an amended complaint, his amended complaint must be a complete document that includes all of the bases for Brown's claims, including claims that the Court has not yet dismissed if he seeks to proceed on those claims.**² **Claims that are not included in the amended complaint will not be considered part of this case because the amended complaint becomes the pleading upon which the case will proceed.** Any amended complaint shall identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint, shall state the basis for Brown's claims against each defendant, and shall bear the title "Amended Complaint" and the case number 23-0780. When drafting his amended complaint, Brown should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

11. If Brown does not file an amended complaint the Court will direct service of his initial Complaint on Defendant Jessica Collins **only**. Brown may also notify the Court that he seeks to proceed solely on his § 1983 First Amendment retaliation claim against Defendant

¹ This form is available on the Court's website at <http://www.paed.uscourts.gov/documents/forms/frmc1983f.pdf>.

² Specifically, if Brown decides to file an Amended Complaint, he must reallege his § 1983 First Amendment Retaliation claim against Defendant Jessica Collins if he seeks to pursue it.

Collins rather than file an amended complaint. If he files such a notice, Brown is reminded to include the case number for this case, 23-0780.

12. The time to serve process under Federal Rule of Civil Procedure 4(m) is **EXTENDED** to the date 90 days after the Court issues summonses in this case if summonses are issued.

IT IS SO ORDERED.

/s/ *Karen Spencer Marston*
KAREN SPENCER MARSTON, J.